

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2506777
Decision Date:	7/15/2025	Hearing Date:	06/02/2025
Hearing Officer:	Thomas J. Goode		

Appearances for Appellant:




Appearance for MassHealth:
Lesile Garcia, Tewksbury MEC



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Waivers- PACE
Decision Date:	7/15/2025	Hearing Date:	06/02/2025
MassHealth's Rep.:	Leslie Garcia	Appellant's Reps.:	
Hearing Location:	Remote	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated March 24, 2025, MassHealth notified Appellant the amount she pays for her Program of All-Inclusive Care for the Elderly (PACE) provider changed from \$0 to \$321.15 (130 CMR 519.007 and Exhibit 1). Through a notice dated April 1, 2025, MassHealth approved Appellant for MassHealth Standard coverage plus Waiver Services benefits effective April 1, 2025, with a monthly net deductible amount of \$2,680. Appellant filed this appeal in a timely manner on April 29, 2025 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The hearing record remained open for the parties to review income and calculations. Responses were timely submitted (Exhibit 6).

Action Taken by MassHealth

Through a notice dated March 24, 2025, MassHealth notified Appellant the amount she pays for her Program of All-Inclusive Care for the Elderly (PACE) provider changed from \$0 to \$321.15. Through a notice dated April 1, 2025, MassHealth approved Appellant for MassHealth Standard coverage plus Waiver Services benefits effective April 1, 2025, with a monthly net deductible amount of \$2,680.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007(C), in determining the amount the appellant pays for her Program of All-Inclusive Care for the Elderly (PACE) provider is \$2,680 per month.

Summary of Evidence

The MassHealth representative testified that Appellant has been enrolled in PACE (Program of All-Inclusive Care for the Elderly) since November 1, 2020. The Post-Eligibility Treatment of Income (PETI) calculation of shared cost for members enrolled in PACE applies only to members who had income below 300% of the Federal Benefit Rate at the time of initial enrollment in PACE. MassHealth testified that Appellant's income in 2020 was erroneously entered into the MassHealth system as \$820 and a monthly deductible was not assessed at the time eligibility was established because, although Appellant was receiving Social Security income at the point of initial enrollment in PACE in 2020, it was not verified by MassHealth until November 3, 2020. When Appellant initially applied for the PACE program in 2020, her actual gross income totaled \$2,632.58 consisting of \$1,783.60 Social Security income, \$264.81 annuity income, \$490.18 pension income, and \$93.99 Medicare refund through the pension. Appellant's income in 2020 exceeded 300% of the FBR for 2020: \$2,349. Appellant has been receiving a lower shared cost for the PACE program since 2020 based on a PETI deduction calculation that should not have been applied. The notice dated March 24, 2025, includes an erroneous \$506.15 PETI shared cost calculation that reduced Appellant's 2025 \$3,407.15 income by 300% of the FBR, \$2,901 and by \$185 Medicare Self Pay Amount, to arrive at a \$321.15 monthly PETI amount to be paid to the PACE provider (Exhibit 1). MassHealth testified that a second notice dated April 1, 2025, removed the PETI deduction for which Appellant is not eligible and resulted in a monthly net deductible amount of \$2,680 (Exhibit 1A). The MassHealth representative explained that Appellant has received a PETI deduction in error since 2020 and incorrect notices of a reduced shared cost amount from 2020 forward were generated due to system errors that calculated PETI deduction amounts based on Appellant's initial enrollment in PACE in 2020 with income incorrectly recorded as below 300% of the FBR.

MassHealth received an application dated March 29, 2024, that verified Appellant's current countable income of \$3,387.15 consisting of \$2,603 Social Security income, \$264.81 annuity income, and \$519.34 pension income. Appellant's current income exceeds 300% of the Federal Benefit Rate for 2025, \$2,901. During the record open period, MassHealth verified Appellant's income totals \$3,387.15 and the Medicare refund through the pension is no longer received. For the calculation of a monthly deductible, Appellant's income was reduced by a \$20 unearned income disregard for total countable income of \$3,367.15. Appellant's income was reduced by \$522 which is the Income Standard for a household size of 1, and by the \$185 Medicare Self Pay amount and resulted in a

revised monthly deductible amount of \$2,660.15 (Exhibits 1A, 6).¹

MassHealth testified that because Appellant's income was over 300% of the FBR when she initially enrolled in the PACE program in 2020, she is not eligible for PETI treatment of income as described in Eligibility Operations Memo 21-13 dated July 14, 2021 that directs that members with income over 300% of the FBR upon initial enrollment in PACE are not included in the special income group entitled to a PETI deduction. The MassHealth representative stated that the only reason Appellant received notices stating a lower shared cost was due to system errors that allowed PETI deductions that were to Appellant's benefit and are in the process of being corrected going forward. MassHealth added that a PETI deduction would only apply if Appellant's current income went below the FBR rate of \$2,901.

Appellant was represented by her daughter and a social work manager from the PACE program. Appellant's representatives testified that Appellant has not been assessed a monthly deductible since she enrolled in PACE and a \$2,600 deductible amount is too high, leaving only \$700 to pay Appellant's other expenses including \$300 credit card expenses, and clothing expenses. Appellant's daughter testified that she has received notices showing different shared costs for the PACE program. She added that Appellant receives gross Social Security income of \$2,603, but \$260.30 is deducted for an overpayment recoupment, resulting in \$2,157.70 monthly net Social Security income. Appellant's daughter also stated that Appellant's rent is increasing from \$3,418 to \$3,520. Appellant's daughter asserted that even counting gross Social Security income, Appellant's share of the cost of the PACE program should be her \$3,387.15 income minus \$2,901 FBR to equal a more reasonable \$486.15. Appellant's daughter stated that the inconsistency in the calculation of the shared cost has caused anxiety over Appellant's medical care as a result of the increased cost at a time when she has advancing dementia and breast cancer, and that she would like for Appellant to stay in the same familiar setting where she is comfortable and feels at home with the staff and care she is provided.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. Appellant has been enrolled in PACE (Program of All-Inclusive Care for the Elderly) since November 1, 2020.
2. The Post-Eligibility Treatment of Income (PETI) calculation of shared cost for members enrolled in PACE applies only to members who had income below 300% of the Federal Benefit Rate at the time of initial enrollment in PACE.

¹ The notice dated April first lists \$3,407.15 unearned income. MassHealth clarified income totals \$3,387 (Exhibit 6).

3. Appellant's income in 2020 was erroneously entered into the MassHealth system as \$820 and a monthly deductible was not assessed at the time eligibility was established because although Appellant was receiving Social Security income at the point of initial enrollment in PACE in 2020, it was not verified by MassHealth until November 3, 2020.
4. When Appellant initially applied for the PACE program in 2020, Appellant's actual gross income totaled \$2,632.58 consisting of \$1,783.60 Social Security income, \$264.81 annuity income, \$490.18 pension income, and \$93.99 Medicare refund through the pension.
5. 300% of the Federal Benefit Rate for 2020 was \$2,349.
6. The notice dated March 24, 2025, includes an erroneous \$506.15 PETI shared cost calculation that reduced Appellant's 2025 income by 300% of the FBR, \$2,901 and by \$185 Medicare Self Pay Amount, to arrive at a \$321.15 monthly PETI deduction to be paid to the PACE provider.
7. A second notice dated April 1, 2025, removed the PETI calculation for which Appellant is not eligible and resulted in a monthly net deductible amount of \$2,680.
8. Appellant's current 2025 income is \$3,387.15 consisting of \$2,603 gross Social Security income, \$264.81 annuity income, and \$519.34 pension income.
9. 300% of the Federal Benefit Rate for 2025 is \$2,901.

Analysis and Conclusions of Law

Regulation 130 CR 519.007 provides the following:

(C) Program of All-inclusive Care for the Elderly (PACE).

(1) Overview. The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing facility services living in the community.

(a) A complete range of health care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.

(b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).

(c) Persons enrolled in PACE have services delivered through managed care

1. in day-health centers;
2. at home; and
3. in specialty or inpatient settings, if needed.

(2) Eligibility Requirements. In determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of their marital status. The applicant or member must meet all of the following criteria:

- (a) be 55 years of age or older;
- (b) meet Title XVI disability standards if 55 through 64 years of age;
- (c) be certified by the MassHealth agency or its agent to be in need of nursing facility services;
- (d) live in a designated service area;
- (e) have medical services provided in a specified community-based PACE program;
- (f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: *Asset Reduction*; and
- (g) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual.

(3) Income Standards Not Met. Individuals whose income exceeds the standards set forth in 130 CMR 519.007(C)(2) may establish eligibility for MassHealth Standard by meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*.²

² See Regulation 130 CMR 520.028: Eligibility for a Deductible:

The following individuals may establish eligibility by meeting a deductible: (A) former SSI recipients who are not eligible under the Pickle Amendment; (B) community-based individuals whose countable-income amount exceeds the 100 percent federal poverty level income standards; (C) long-term-care-facility residents whose income, after general deductions described in 130 CMR 520.026, exceeds the public rate in a long-term-care facility; (D) disabled adult children whose incomes exceed the standards set forth in 130 CMR 519.004(A): *Eligibility Requirements*; and (E) persons who are eligible for an increased disregard as described at 130 CMR 520.013(B).

520.029: The Deductible Period

The deductible period is a six-month period that starts on the first day of the month of application or may begin up to three months before the first day of the month of application. The applicant is eligible for this period of retroactivity only if the applicant incurred medical expenses covered by MassHealth and was otherwise eligible.

520.030: Calculating the Deductible

The deductible is determined by multiplying the excess monthly income by six. Excess monthly income is the amount by which the applicant's countable-income amount as described in 130 CMR 520.009 exceeds the MassHealth deductible-income standard.

MASSHEALTH DEDUCTIBLE-INCOME STANDARDS

<u>Number of Persons</u>	<u>Monthly-Income Standard for Community Residents</u>	<u>Monthly-Income Standard for Long-term-care-facility Residents</u>
1	\$522	\$72.80
2	650	

520.031: Notification of Potential Eligibility

(A) The MassHealth agency informs the applicant who has excess monthly income that he or she is currently ineligible for MassHealth Standard, Family Assistance, or Limited but may establish eligibility for a six-month period by meeting the deductible. The MassHealth agency informs the applicant in writing of the following:

- (1) the deductible amount and the method of calculation;
- (2) the start and end dates of the deductible period;
- (3) the procedures for submitting medical bills;
- (4) his or her responsibility to report all changes in circumstances that may affect eligibility or the deductible amount; and
- (5) that the bills submitted to meet the deductible are the responsibility of the individual and cannot be submitted for MassHealth agency payment.

(B) A member who has established eligibility based upon meeting a deductible is only eligible for MassHealth Standard, Family Assistance, or Limited until the end of the deductible period. At the end of the deductible period, the MassHealth agency notifies the member in writing of a new deductible period and amount, if the countable-income amount continues to exceed applicable income standards.

520.032: Submission of Bills to Meet the Deductible

(A) Criteria. To establish eligibility by meeting a deductible, the individual must submit verification of medical bills whose total equals or exceeds the deductible and that meet the following criteria.

- (1) The bill must not be subject to further payment by health insurance or other liable third-party coverage, including the Health Safety Net.
- (2) The bill must be for an allowable medical or remedial-care expense in accordance with 130 CMR 520.032(B). A remedial-care expense is a nonmedical support service made necessary by the medical condition of the individual or the spouse.
- (3) The bill must be unpaid and a current liability or, if paid, paid during the current six-month deductible period.
- (4) Any bill or portion of a bill used to meet a deductible may not be applied to any other deductible period. However, any portion of a bill not used to meet the current deductible may be used in a future deductible period. The MassHealth agency will not pay any bills or portions of bills that are used to meet the deductible. These bills remain the responsibility of the applicant.

(B) Expenses Used to Meet the Deductible. The MassHealth agency applies bills to meet the deductible in the following order:

- (1) Medicare and other health-insurance premiums credited prospectively for the cost of six months' coverage, deductibles, enrollment fees, or coinsurance charges incurred by the individual and the spouse;

Eligibility Operations Memo 25-07 dated May 2025 provides:

To be eligible for both PACE and a MassHealth benefit, a person must have monthly income at or

(2) expenses incurred by the individual and the spouse for necessary medical and remedial-care services that are recognized under state law but are not covered by MassHealth, including guardianship fees and related expenses as described in and allowed under 130 CMR 520.026(E)(3); and

(3) expenses incurred by the individual, a family member, or financially responsible relative for necessary medical and remedial-care services that are covered by MassHealth.

(C) Expenses that Cannot be Used to Meet the Deductible. Expenses that may not be applied to meet the deductible include, but are not limited to, the following:

- (1) cosmetic surgery;
- (2) rest-home care;
- (3) weight-training equipment;
- (4) massage therapy;
- (5) special diets; and
- (6) room-and-board charges for individuals in residential programs.

520.033: Verification of Medical Expenses

(A) Medical expenses must be verified by a bill or written statement from a health-care provider with the exception of expenses for nonprescription drugs, which must be verified by a receipt from the provider of the drug. Any unpaid bill incurred before the deductible period must be verified by a bill dated within the six-month deductible period.

(B) Verifications must include all of the following information:

- (1) the name of the provider;
- (2) the type of service provided;
- (3) the name of the individual for whom the service was provided;
- (4) the amount charged for the service including the current balance; and
- (5) the date of service.

520.034: Interim Changes

The applicant or member must notify the MassHealth agency of any changes occurring before meeting the deductible or during the deductible period. These changes include an increase or decrease in income or an increase in assets.

520.035: Conclusion of the Deductible Process

When the total of submitted bills is equal to or greater than the deductible and all other eligibility requirements continue to be met, the MassHealth agency notifies the applicant that he or she is eligible. The member is eligible for payment of all covered medical expenses incurred during that deductible period, other than those submitted to meet the deductible, as long as the member continues to meet all other eligibility requirements during the balance of the deductible period.

below 300% of the Federal Benefit Rate (FBR), and countable assets at or below \$2,000. When an applicant is married, MassHealth only counts the income and assets of the applying spouse. If a person's income is higher than 300% FBR, they may still qualify for PACE by meeting a deductible. Additionally, individuals may enroll in PACE without a MassHealth benefit through a private payment option.

....

Post Eligibility Treatment of Income

The Post-Eligibility Treatment of Income (PETI) process for MassHealth members enrolled in PACE is described in [EOM 21-13](#).

Eligibility Operations Memo 21-13 dated July 14, 2021 provides the following with relevant emphasis in bold:

The post-eligibility treatment of income (PETI) process for MassHealth members who are enrolled in the Program of All-Inclusive Care for the Elderly (PACE) and who had income at or below 300% of the Federal Benefit Rate (FBR) at the point of their initial MassHealth eligibility. Effective immediately, for purposes of PETI, such members will be treated as part of the special income eligibility group under 42 CFR 435.217.

Post-Eligibility Treatment of Income

Post-eligibility treatment of income rules are used to calculate a member's contribution to the cost of care.

Federal Regulations 42 CFR 460.184 and 42 CFR 435.217

Pursuant to federal PACE regulations at 42 CFR 460.184, a state may elect to provide for post-eligibility treatment of income in PACE in the same manner as provided for the special income eligibility group for home and community-based waivers under 42 CFR 435.217. As noted above, MassHealth will implement this change effective immediately.

This means that individuals who had initially established MassHealth eligibility with income at or below 300% of the FBR and are enrolled in PACE, but who later experienced an increase in countable income, causing their income to exceed 300% of the FBR, may remain in their MassHealth Standard benefit and remain enrolled in PACE by spending down their income to 300% of the FBR. These members will remain financially eligible for continued MassHealth enrollment in PACE, subject to a monthly patient paid amount that is equal to their excess income over 300% of the FBR, less any allowable deductions.

Note: Individuals enrolled in PACE who had income over 300% of the FBR at the time of their initial MassHealth eligibility determination are not in the special income eligibility group and therefore PETI rules cannot be applied. However, such PACE enrollees may continue to

establish eligibility for MassHealth Standard by spending down their income according to the rules at 130 CMR 520.028 through 520.035.

PETI Patient Paid Amount for PACE Enrollees in the Special Income Group

The PETI patient paid amount for a MassHealth member enrolled in PACE and in the special income eligibility group is calculated by taking the member's countable monthly income and subtracting the monthly equivalent of 300% of the FBR and any allowable deductions in accordance with 42 CFR 435.726(c). When a MassHealth member has the special income eligibility group PETI rules applied, the member will receive a notice containing the patient paid amount calculation, amount, and further instructions.

Continued Participation

When PETI is applied to a MassHealth member enrolled in PACE and in the special income eligibility group, it remains in effect if the member is otherwise eligible for MassHealth and participation in PACE. **The special income eligibility group PETI rules do not apply to members enrolled in PACE who had income over 300% of the FBR at the point of initial MassHealth eligibility and enrollment in PACE and who are eligible for a patient paid amount based on the MassHealth Income Standard, as defined in 130 CMR 520.028 through 520.035, in order to establish MassHealth eligibility.**

(See Exhibits 4, 5)

It is Appellant's burden to demonstrate the invalidity of the administrative determination.³ Appellant has been enrolled in PACE (Program of All-Inclusive Care for the Elderly) since November 1, 2020. Appellant's income in 2020 was erroneously entered into the MassHealth system as \$820 and a monthly deductible was not assessed at the time eligibility was established because, although Appellant was receiving Social Security income at the point of initial enrollment in PACE in 2020, it was not verified by MassHealth until November 3, 2020. When Appellant initially applied for the PACE program in 2020, her actual gross income totaled \$2,632.58 consisting of \$1,783.60 Social Security income, \$264.81 annuity income, \$490.18 pension income, and \$93.99 Medicare refund through the pension. 300% of the Federal Benefit Rate for 2020 was \$2,349. As outlined above, the Post-Eligibility Treatment of Income (PETI) calculation of shared cost for members enrolled in PACE applies only to members who had income below 300% of the Federal Benefit Rate at the time of initial enrollment in PACE. Therefore, upon her initial enrollment in PACE, Appellant did not meet requirements for post-eligibility treatment of income in PACE under the special income eligibility

³ See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. *See* *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 Page 9 of Appeal No.: 2309752 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

group requirements for home and community-based waivers as described in EOM 21-13 (Exhibit 5). The notice dated March 24, 2025, includes an erroneous \$506.15 PETI shared cost calculation that reduced Appellant's 2025 income by 300% of the FBR, \$2,901 and by \$185 Medicare Self Pay Amount, to arrive at a \$321.15 monthly PETI amount to be paid to the PACE provider (Exhibit 1). Appellant's current 2025 income confirmed by MassHealth is \$3,387.15 consisting of \$2,603 Social Security income, \$264.81 annuity income, and \$519.34 pension income.⁴ 300% of the Federal Benefit Rate for 2025 is \$2,901. Therefore, MassHealth correctly issued a second notice dated April 1, 2025, that removed the PETI calculation for which Appellant is not eligible. Based on revised income totaling \$3,387.15, a monthly net deductible amount of \$2,660.15 applies. The deductible amount was correctly calculated by reducing unearned income of \$3,887.15 by a \$20 unearned income disregard, by \$522 income standard for one person, and an additional \$185 for monthly Medicare payments.⁵ Because the MassHealth action is correct, and Appellant has not shown that her income for 2020 was below 300% of the FBR when she enrolled in PACE, the appeal must be DENIED.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

[REDACTED]

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

⁴ Countable unearned income includes gross Social Security income (130 CMR 520.009). However, even if Appellant's Social Security income was reduced by \$260.30, total income of \$3,126.85 still exceeds 300% of the FBR, \$2901.

⁵ See 130 CMR 520.028 through 520.035 at fn. 1.